APPENDIX A

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION

D/S A/S SVERRE, LIBELLANT,

VS.

TEXPORTS STEVEDORE CO., INC.,
RESPONDENT.

ADMIRALTY No. 64-G-71

Findings of Fact and Conclusions of Law

I.

This action results from an accident which occurred on February 29, 1960, when Edward M. Maples, a longshoreman employed by the Respondent, Texports Stevedore Co., fell and was seriously injured while descending a ladder into the hold of the M/V ATNA, a deep-sea ocean carrier owned by Libellant, D/S A/S SVERRE. For convenience, Libellant will hereafter be referred to as "shipowner", and Respondent will hereafter be referred to as the "stevedoring company".

Maples brought a civil action against the shipowner in the Houston Division of this Court, being cause No. 13059 styled H. D. Maples as Natural Guardian and Next Friend of Edward M. Maples v. D/S A/S Sverre, et al., alleging unseaworthiness of the M/V ATNA and negli-

gence of the shipowner as the cause of his injury. Texas Employers' Insurance Association, as the compensation insurance carrier for the stevedoring company under the provisions of the Longshoremen's and Harbor Workers' Compensation Act, intervened in the civil action for the recovery of monies it had paid out for compensation benefits to Maples and for his medical expense. The shipowner elected not to implead the stevedoring company in Maples' earlier action, cause No. 13059, but did tender the defense of the action to the stevedoring company and Texas Employers' Insurance Association as its liability carrier, which tender was declined.

The trial of Maples' case, No. 13059, was before a jury, which found, in answer to interrogatories submitted by the Court:

(Interrogatory 1) That the portside 'tween or shelter deck access way and its surroundings situated between the Number 1 and Number 2 hatches or holds on the M/V ATNA were, as they existed on February 29, 1960, negligently designed or constructed;

(Interrogatory 2) That such negligence was a proximate cause of injury to Edward M. Maples;

(Interrogatory 3) That the shipowner-defendant did not fail to provide Maples with a reasonably safe means of getting from the weather deck to his place of work on the 'tween or shelter deck at Hold No. 3;

(Interrogatory 7) That the portside 'tween deck or shelter deck access way and surroundings were not unseaworthy;

(Interrogatories 9, 10, 11) That Maples' own negligence was a contributing cause of his injury to the extent of 40%; and

(Interrogatory 13) That Maples suffered damages in the amount of $275,000.00.

In addition thereto, the medical expense was stipulated to be $20,498.55, making the total amount of damages $295,498.55. Judgment was entered against the shipowner on this verdict, August 23, 1962, for the total sum of $177,299.31 (60% of the total damages), of which $150,104.46, with interest and costs, was awarded to Maples and $27,194.85, with interest and costs, was awarded to Texas Employers' Insurance Association, as intervenor.

Having paid and satisfied said judgment, the shipowner, as libellant, now brings this separate action for indemnity against the stevedoring company, employer of Maples, as respondent, asking reimbursement for the amount so had to be paid because of this injury and for its attorney's fees and other expenses incurred in the defense of Maples' suit. To be entitled to recover in this action for indemnity from the stevedoring company, the shipowner has the burden of proving the following:

1. That the stevedoring company breached its warranty of workmanlike service by failing to perform its work in a workmanlike manner and with reasonable safety to persons and property.

2. That such breach of warranty by the stevedoring company was a proximate cause of Maples' injury.

3. That the conduct of the shipowner which was a proximate cause of Maples' injury was not sufficient to preclude its recovery of indemnity.

It was agreed that the damages awarded by the jury and paid by the shipowner in satisfying the judgment in favor of Maples in Civil Action No. 13059 were reasonable in amount.

II.

The main or weather deck hatch cover at the No. 3 hold was open. No. 2 hatch cover was open enough to provide sufficient light for the access way and ladder from the weather deck to Maples' place of work at Hold No. 3 to be used with reasonable safety, and the stevedoring company did not breach its warranty of workmanlike service by permitting Maples and the other longshoremen to use the access way and ladder to descend to their place of work.

III.

Maples had been working as a longshoreman eight or nine months; had worked on many types of ships; knew that ships, while generally alike, have little differences in them, had encountered all kinds of ladders on ships, had used ladders, similar to the one from which he fell, on other vessels prior to his fall; had had prior experience in the use of ladders in the roofing business and had used vertical ladders on railroad boxcars. Maples testified he did not feel he needed, and did not ask for, instructions in the use of ladders prior to his accident.

The shipowner has not established that the stevedoring company's failure to give supervision, instruction, or caution to Maples on the use of access ways or ladders amounted to a breach of the stevedoring company's warranty of workmanlike service which was a proximate cause of his accident.

IV.

The negligence of Maples which the jury found contributed 40% to causing his injury was not a breach of the stevedoring company's warranty of workmanlike service.

V.

The stevedoring company did not breach its warranty of workmanlike service by failing to perform its work in a workmanlike manner and with reasonable safety to persons and property which was a cause of Maples' injury.

The shipowner has failed to sustain his burden of proof.

VI.

The shipowner's furnishing of the negligently designed and constructed access way and ladder which was the proximate cause of Maples' injury was conduct on the part of the shipowner sufficient to preclude its recovery of indemnity from the stevedoring company (Waterman Steamship Corporation v. David, 5 Cir. 1965, 353 F. 2d 660, cert. denied June 6, 1966, 34 U.S. Law Week 3414).

CONCLUSIONS OF LAW

I.

This Court has jurisdiction of this cause.

II.

The shipowner is not entitled to recover indemnity from the stevedoring company.

III.

The shipowner's Libel will be dismissed with costs of Court to be paid by the Libellant. Counsel for Respondent will prepare and submit Final Decree in accordance herewith.

SIGNED and ORDERED ENTERED the 14th day of July, 1966.

Joe E. Estes
United States District Judge

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION

D/S A/S SVERRE, LIBELLANT,

VS.

TEXPORTS STEVEDORE CO., INC.,
RESPONDENT.

ADMIRALTY No. 64-G-71

Final Judgment

This cause having duly come on to be heard by the Court on July 11, 1966, and the Libellant appearing by and through its proctors of record, Messrs. Eastham, Watson, Dale & Forney and Respondent having appeared by and through its proctors of record, Messrs. Royston, Rayzor & Cook, and the Court having heard the evidence herein and having duly considered the evidence, the pleadings and the argument of counsel, and after due deliberation the Court having concluded the Libellant is not entitled to recover herein and the Court having filed its Findings of Fact and Conclusions of Law pursuant to Federal Rule of Civil Procedure No. 52, now, therefore, on motion of Messrs. Royston, Rayzor & Cook, proctors for Respondent

IT IS ORDERED, ADJUDGED AND DECREED that Libellant take nothing herein and that this cause be, and it hereby is dismissed with prejudice with costs to be paid by the Libellant.

Done at Galveston, Texas, this the 14th day of July, 1966.

Joe E. Estes
United States District Judge

APPENDIX C

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 24051

D/S A/S SVERRE,
Appellant,

vs.

TEXPORTS STEVEDORE CO., INC.,
Appellee.

Appeal from the United States District Court for the Southern District of Texas

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(January 9, 1968)

Before TUTTLE and GEWIN, Circuit Judges, and HUNTER, District Judge

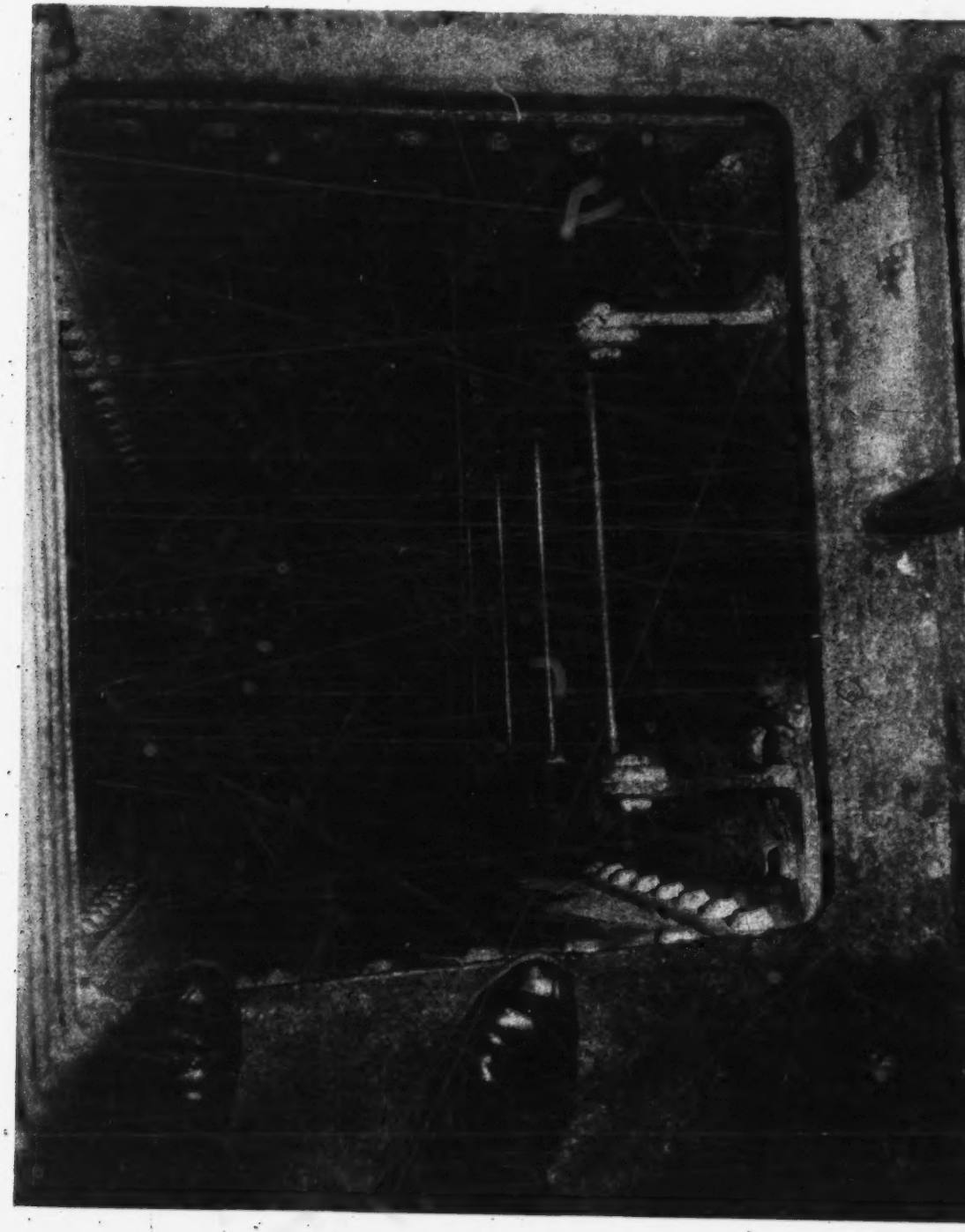
PER CURIAM: This appeal complains of a dismissal of a libel filed by the shipowner, Sverre, against contract stevedores, Texports Stevedore Co., Inc., to recover indemnity for amounts required to be paid by Sverre to a longshoreman because of injuries received by him while working on the shipowner's boat. The only serious question

raised here was whether there was sufficient evidence before the trial court which would warrant its findings that the conduct on the part of the shipowner was such as would preclude its recovery of indemnity against a contract stevedore. The district court found there was no breach by the stevedore of its warranty of workmanlike service, and, therefore, no warranty breach as proximate cause of Maples' injury, and the court further found conduct by the shipowner sufficient to preclude its recovery of indemnity.

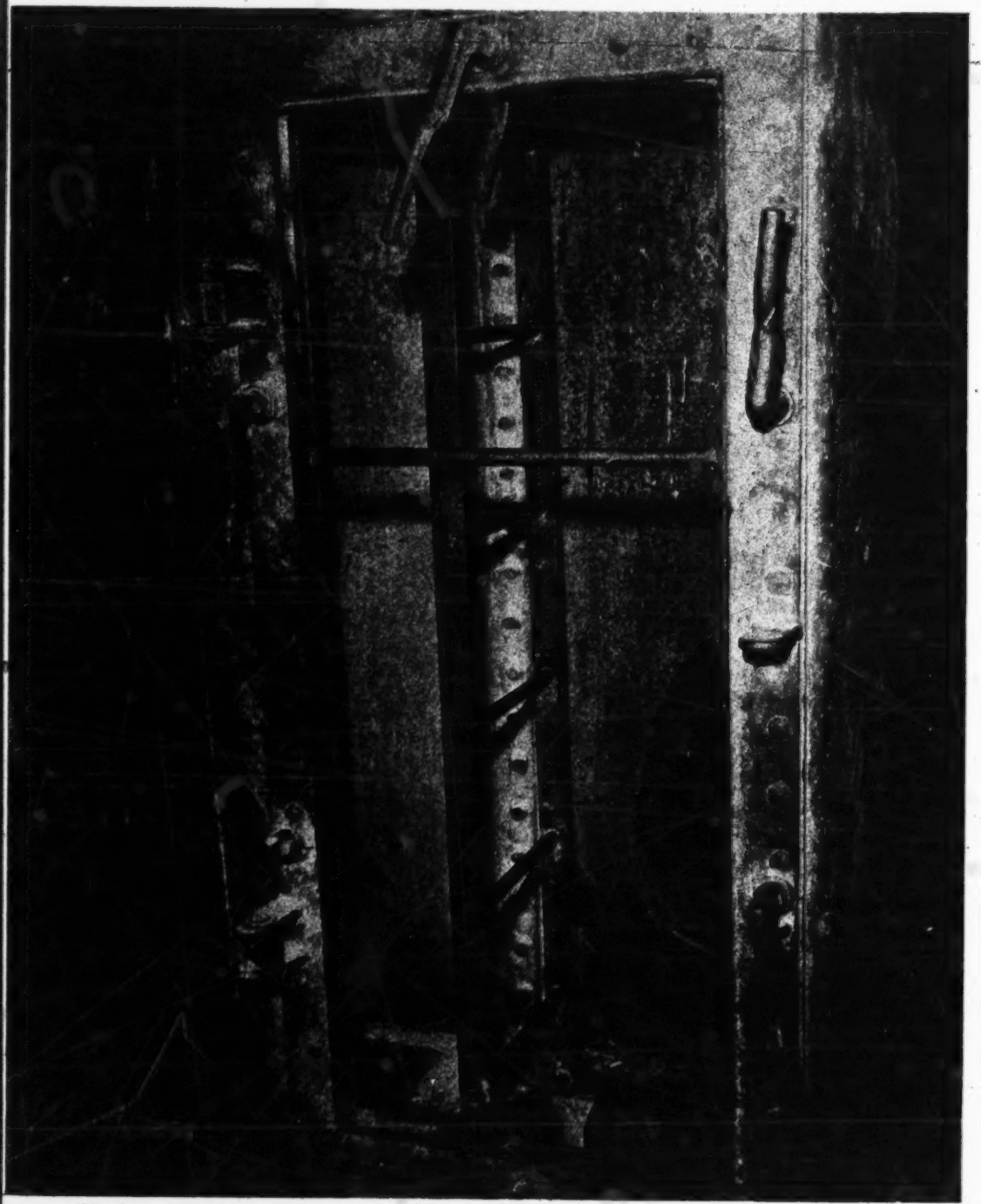
Having carefully considered the evidence as to the construction of the access into the hold, described by the trial court as one "that I have never seen a more dangerous access way than these exhibits in here show this one to have been," we cannot reverse as clearly erroneous the trial court's judgment that "it is just exactly the sort of conduct that precludes the shipowner from recovery . . . ."

The judgment is AFFIRMED.

APPENDIX D-1



APPENDIX D-2



APPENDIX D-3

